

FILED

at \_\_\_\_ O'clock & \_\_\_\_ min. \_\_\_\_ M

JAN - 3 2006

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court  
Columbia, South Carolina (37)

IN RE:

Robert Shields and Jessie Lee Shields,

Debtors.

C/A No. 05-45251-JW

Chapter 13

**JUDGMENT**

**ENTERED**

JAN - 3 2006

**D. H. R.**

Based upon the findings of fact and conclusions of law made in the attached Order, the Motion to Extend Stay filed by Robert Shields and Jessie Lee Shields ("Debtors") is denied. Therefore, Debtors' automatic stay shall terminate on January 4, 2006.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
January 3, 2006

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Robert Shields and Jessie Lee Shields,

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ORDER

ENTERED

JAN - 3 2006

D. H. R.

This matter comes before the Court upon a Motion to Extend Stay ("Motion") that was filed by Robert Shields and Jessie Lee Shields (hereinafter the Shields shall be referred to as "Debtors" or "Shields") pursuant to 11 U.S.C. § 362(c)(3)(B).<sup>1</sup> The Motion was served on all creditors, but none filed an objection. The Chapter 13 Trustee filed a response to the Motion.

The Shields were debtors in a previous bankruptcy case (C/A No. 04-00059-jw) that was pending within a one (1) year period preceding the filing of this case. Debtors' previous case was dismissed because they failed to pay their chapter 13 plan obligations in a timely manner. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on January 4, 2006, the thirtieth (30th) day after Debtors' filed their second bankruptcy case (C/A No. 05-45251-jw).

Pursuant to § 362(c)(3)(C)(i)(II)(cc), a presumption that Debtors did not file their second bankruptcy case in good faith exists because Debtors' previous case was dismissed for failure to make timely payments under their confirmed plan. Furthermore, the lack of good faith presumption also arises pursuant to § 362(c)(3)(C)(ii) as to Bank of America and Select Portfolio Servicing (f.k.a. Fairbanks Capital Corp.); because at the

<sup>1</sup> Hereinafter internal references to the Bankruptcy Code (11 U.S.C. § 101 et. seq.), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be made by section number only.

time Debtors' previous case was dismissed, Bank of America and Select Portfolio Servicing, both of which are creditors with liens on Debtors' real property interests, had received relief from the automatic stay. In light of the presumption of a lack of good faith, Debtors must demonstrate that their current case was filed in good faith by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C).

In order to demonstrate that they filed this current bankruptcy case in good faith, Debtors assert that (1) the elimination of certain extreme medical expenses existing during the administration of the prior case and (2) a cost of living adjustment to their social security benefits are two factors that demonstrate a substantial change in circumstances which indicate a likelihood that the Chapter 13 plan in this case will be confirmed and fully performed.

Debtors contend that they were unable to make timely plan payments in their prior case because of expenses associated with the misdiagnosis of Mr. Shields' vertigo illness. Apparently, in May 2005, Mr. Shields became ill with vertigo. However, Mr. Shields' healthcare provider misdiagnosed the vertigo as complications from diabetes. The misdiagnosis required Mr. Shields to make numerous hospital visits, and it caused Mr. Shields' physician to prescribe certain medications that were not covered by Mr. Shields' Medicaid benefits. After discovery of the misdiagnosis, Mr. Shield was properly treated for vertigo. Thus, Debtors assert as a substantial change of circumstances that they are no longer burdened with the substantial expenses associated with the medications prescribed for diabetes treatment.

Debtors were given an opportunity to supplement the record of this case in order to provide documents describing and corroborating Mr. Shields' medical problems and

the severity of the costs associated with his treatment. Debtors provided certain documents. However, none of the documents appear to indicate that Debtors incurred substantial medical expenses that were not covered by their Medicare benefits during the May 2005 time period described at the hearing. Furthermore, the documents that Debtors submitted do not provide any information concerning the substantial costs associated with the medications that were not covered by Medicaid.<sup>2</sup> In the absence of such information, Debtors have not demonstrated, by clear and convincing evidence, a substantial change in circumstances through a decrease in their medical expenses in order to rebut the presumption that Debtors have filed this second case with a lack of good faith.

Debtors also point to a cost of living adjustment to their social security benefits as a substantial change in circumstances that demonstrates that they filed this second case in good faith. The Court finds otherwise. Although Debtors will enjoy an increase in their social security benefits after January 1, 2006, the 3% increase they received is a marginal and is not indicative of a substantial change in circumstance that is sufficient to rebut, by clear and convincing evidence, the presumption of a lack of good faith.

The Court also notes that Debtors did not request a moratorium for their plan payments during the period that Mr. Shields suffered from vertigo. The Chapter 13 Trustee also informed the Court that he provided Debtors with an ample opportunity to become current on their payments, but Debtors made no efforts to do so, and became delinquent on six payments at the time of the dismissal of the first case. Moreover, the record of this case clearly indicates that Debtors filed this second case in order to prevent

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<sup>2</sup> The Court notes that the some of the documents provided by Debtors concern medical expenses that were incurred in the year 2004. Furthermore, the medical costs listed on the documents appear to have been substantially covered by Debtors' Medicare benefits.

foreclosure of real estate addressed by Select Portfolio Servicing's Relief from Stay Motion that was granted in the prior case.

Accordingly, in light of the totality of the circumstances attendant in this case, the Court concludes that Debtors have failed to rebut, by clear and convincing evidence, the presumption that Debtors lacked good faith in the filing of this case. Therefore, Debtors' Motion to Extend Stay is denied, and the stay shall expire on January 4, 2006 pursuant to the provisions of § 362(c)(3)(A).

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
1/3, 2006

  
UNITED STATES BANKRUPTCY JUDGE